

**OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS**  
**Stella B. Werner Council Office Building**  
**Rockville, Maryland 20850**  
**(240) 777-6660**

**IN THE MATTER OF:**  
**GARRETT GATEWAY PARTNERS, LLC**  
**Applicant**

Dean Packard  
William Landfair  
Steve Mulholland  
Michael Lenhart  
For the Application

Stephen J. Orens, Esquire  
Attorney for the Applicant

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OZAH Case No. CU 16-11

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Before: Martin L. Grossman, Hearing Examiner  
Director, Office of Zoning and Administrative Hearings

**HEARING EXAMINER’S ORDER GRANTING THE CONDITIONAL USE HOLDER’S  
REQUEST FOR AN EXTENSION UNTIL DECEMBER 2, 2019, TO OBTAIN  
BUILDING PERMITS TO IMPLEMENT THE CONDITIONAL USE**

**I. BACKGROUND**

On February 4, 2016, the Applicant, Garrett Gateway Partners, LLC, filed an application seeking approval of a conditional use for a Townhouse Living project consisting of 19 townhouse units, pursuant to Zoning Ordinance §59.3.3.1.D.2.b. The project has been dubbed “Cashell Estates.” The subject site is on a two-acre property in the RE-1 zone, located at 7009 Garrett Road, in Derwood, at the intersection of Garrett Road and Redland Road. It is described as Part of Lot 5, Block B in the Cashell Estates Subdivision and is subject to the 2004 Upper Rock Creek Master Plan. The property is owned by the Applicant and bears Tax Account No. 04-00118126 (Ex. 32).

The proposal is the first to utilize the so-called “Design for Life” conditional use standards adopted by the County Council on April 21, 2015, effective May 11, 2015, in Ordinance No. 18-02 (Zoning Text Amendment No. 15-02). ZTA 15-02 created a new conditional use allowing the establishment of “Design for Life” communities that include features to make access easier for visitors and residents. As noted in the Council’s Opinion accompanying ZTA 15-02, the new conditional use allows an increase in the number of dwelling units per acre over a site’s base

zoning, but requires “Level II accommodations,” which include features that allow easy access for the disabled.<sup>1</sup>

On September 23, 2016, Staff of the Montgomery County Planning Department (Technical Staff or Staff) issued a report recommending approval of the application, subject to six proposed conditions. Exhibit 49. The Montgomery County Planning Board (Planning Board) met on October 6, 2016, and in a letter dated October 7, 2016, unanimously recommended approval of the application, adopting the conditions recommended by Staff and adding two additional proposed conditions. Exhibit 50. The Planning Board advised in its letter that it had also unanimously approved the Applicant’s Preliminary Forest Conservation Plan (PFCP CU2016-11) associated with this conditional use application.

The public hearing proceeded as noticed on October 14, 2016, and the Applicant called four witnesses. There were no community witnesses, and there was no opposition in this case. After the filing of some additional documents, including Technical Staff’s supplemental comments, the record closed on November 3, 2016.

On December 2, 2016, the Hearing Examiner approved the conditional use application, subject to 10 conditions, for the reasons set forth at length in his Report and Decision.

## **II. THE REQUEST TO EXTEND THE IMPLEMENTATION PERIOD OF THE CONDITIONAL USE FOR ONE YEAR**

Zoning Ordinance §59.7.3.1.I. provides:

### **Duration of Approval**

*1. A conditional use that is not established or has not obtained a building permit within 24 months from the date of the issuance of the decision or resolution expires, unless a longer period is established by the decision or resolution.*

*2. After the decision, the Board of Appeals or the Hearing Examiner may extend the time limit for a conditional use to be established or obtain a building permit if the evidence of record establishes that drawing of architectural plans, preparation of the land, or other factors involved in the particular use will delay the start of construction or the establishment of the use beyond the period of validity. An individual extension must not exceed 12 months. If the Board of Appeals or the Hearing Examiner grants an extension, it must set a date by which the erection or alteration of the building must begin or the use must be established.*

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<sup>1</sup> The Level II Accessibility Standards are referenced in Zoning Ordinance §59.3.3.1.D.2.b.i. as “established by Section 52-106 and detailed in Section 52-107.”

On May 22, 2019, the Conditional Use Holder's attorney, Stephen J. Orens, Esquire, filed a request with OZAH (Exhibit 63) to extend the implementation period of the conditional use until December 2, 2019, since Conditional Use Holder had not yet obtained building permits, and the statutory implementation period expired on December 2, 2018, under Zoning Ordinance §59.7.3.1.I.1. The body of that letter is reproduced below:

Garrett Gateway Partners, LLC, the applicant in the above captioned Conditional Use application hereby requests an extension of time until December 2, 2019 to obtain building permits to establish approved Conditional Use Case No. CU 16- 11. The extension of time is necessary in order for the Applicant to complete and secure approval of the plan revisions required by the Planning Area Three Staff following the April approval of the required Preliminary Plan of Subdivision.

The additional plan revisions have been under active discussion with M-NCPPC Staff for several months and must be approved prior to the approval and recordation of the final Plat of Subdivision and the release of building permits by the Department of Permitting Services. The project will be constructed in phases with the final permits issued approximately by June 2020.

We mistakenly believed that a three year validity period had been established by the approval resolution and focused our attention on the M-NCPPC Staff requirements for plan revisions. We will promptly submit the revised Conditional Use Plan to the Office of Zoning and Administrative Hearings so that the Conditional Use Plan can be revised to accommodate the M-NCPPC Staff required revisions. Following that approval the application for Final Plat approval will be submitted to MNCPPC and upon plat recordation, the building permit application will be submitted to DPS. Architectural plans are about 85% complete.

If we are required to submit anything additional please so advise me, Thank you for your attention to this request.

### **III. OPINION AND ORDER**

Zoning Ordinance §59.7.3.1.I.2, quoted above, provides criteria for granting an extension of the two-year time period for implementation specified in §59.7.3.1.I.1., also quoted above. The section does not prohibit such a request from being granted even if it is filed after expiration of the two-year period, as was this request. The Hearing Examiner finds that the late filing of this request does not prejudice any party in this case since there was no opposition to the granting of the conditional use. He therefore will act on the substance of the request, even though filed after the expiration of the conditional use grant.

The statutory provision does require a showing by the conditional use holder that "*factors involved in the particular use will delay the start of construction or the establishment of the use beyond the period of validity.*" Garrett Gateway Partners, LLC, has met this standard by stating that the delays in implementation of the conditional use have been occasioned by plan revisions required by Technical Staff of the Maryland-National Capital Park and Planning Commission.

According to the conditional use holder, “the additional plan revisions have been under active discussion with M-NCPPC Staff for several months and must be approved prior to the approval and recordation of the final Plat of Subdivision and the release of building permits by the Department of Permitting Services.” Garrett Gateway Partners, LLC, mistakenly thought that it had three years, not just two years, to establish the conditional use or to obtain a building permit.

The Hearing Examiner finds that the reason for the delay in implementing the conditional use is a legitimate basis for extending the implementation period until December 2, 2019, as requested by Garrett Gateway Partners, LLC.

Therefore, it is, this 23<sup>rd</sup> day of May, 2019,

ORDERED: That the record in CU 16-11, Garrett Gateway Partners, LLC, is hereby re-opened to receive Garrett Gateway Partners, LLC, 's letter received on May 22, 2019 (Exhibit 63) and this Order; and it is

FURTHER ORDERED: That the Conditional Use Holder's request to extend the implementation period for CU 16-11 until December 2, 2019 is hereby GRANTED; and it is

FURTHER ORDERED: That the implementation period for CU 16-11, is hereby extended until December 2, 2019; and it is

FURTHER ORDERED: That all the conditions imposed in the grant of the conditional use on December 2, 2016, shall remain in effect unless and until modified by the Hearing Examiner; and it is

FURTHER ORDERED: That once it has secured approval by Technical Staff of any proposed plan amendments, the conditional use holder must promptly submit a request to OZAH for a modification of the conditional use to conform to the amended plans, in accordance with Zoning Ordinance §59.7.3.1.K.<sup>2</sup>



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Martin L. Grossman  
Hearing Examiner

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<sup>2</sup> If the conditional use holder believes that the proposed plan changes amount to only to a Minor Amendment, it may seek administrative approval from OZAH for a Minor Amendment under Zoning Ordinance §59.7.3.1.K.2. If OZAH determines that the proposed plan changes are significant enough to warrant a Major Amendment, the conditional use holder will be instructed to follow the procedures outlined in Zoning Ordinance §59.7.3.1.K.1.

## Copies To:

Stephen J. Orens Esquire  
Garrett Gateway Partners, LLC, Applicant  
Dean Packard  
William Landfair  
Steve Mulholland  
Michael Lenhart  
Barbara Jay, Executive Director  
Montgomery County Board of Appeals  
Gwen Wright, Director, Planning Department  
Jonathan Casey, Senior Planner, Planning Department  
Ehsan Motazed, Department of Permitting Services, Zoning & Site Plan Enforcement  
Greg Nichols, Manager, DPS Zoning & Site Plan Enforcement  
Barbara Cox, DPS Zoning & Site Plan Enforcement  
Alexandre A. Espinosa, Director, Finance Department  
Charles Frederick, Esquire, Associate County Attorney